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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

*[Protest of Geographic Restriction in Navy RFP]*

FILE: B-200668

DATE: January 27, 1981

MATTER OF: Norfolk Shipbuilding and  
Drydock Corporation

**DIGEST:**

Navy's general use of geographic restriction to preclude firms in one district from competing for overhaul of ships home-ported in other districts in order to preserve overhaul capacity of those firms is unduly restrictive, although in given case it may be shown that restriction is necessary.

Norfolk Shipbuilding and Drydock Corporation (NORSHIPCO) protests the restriction in request for proposals (RFP) N62665-80-R-0061 issued by the Naval Sea Systems Command for the overhaul of the USS MULLINNIX to firms on the "East and Gulf Coasts, Exclusive of States of North Carolina, Virginia, Delaware, Maryland and Pennsylvania." These states comprise the Fifth Naval District (ND), which is the home port of 55 percent of all Navy vessels home-ported on the East and Gulf Coasts. The USS MULLINNIX is home-ported in Charleston, South Carolina, part of the Sixth ND. NORSHIPCO, located in Norfolk, Virginia, contends that the geographic restriction unduly limited competition for the contract award.

The protest is sustained. However, for the reason noted below we do not recommend any corrective action with respect to this particular procurement.

Background - The Home Port Policy

The RFP's geographical restriction is related to the Navy's "Home Port Policy," established by the Chief of Naval Operations in 1971. The Policy calls for the maximum possible amount of ship maintenance to be performed in a vessel's home port in order to minimize disruption to Navy families in an effort to eliminate problems regarding personnel retention. The Policy is implemented by section

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7-3.4 of the Naval Sea System Command's Master Ship Repair Manual, which provides that except in certain limited circumstances "the performance of work shall be restricted to the home port to which such ships and craft have been assigned, and bids or proposals shall be solicited only from qualified firms within the home port area." The section and accompanying instructions also provide that where adequate competition or reasonable prices cannot be obtained the geographical area is to be expanded, with the areas closest to the home port examined first until those criteria are met. The intention behind first considering the areas closest to the vessel's home port is to make it feasible for crew members to commute home on weekends. If the competition must include areas outside of weekend commuting distance, and a contractor in one of these areas wins the competition, the Navy offers to move the crew's families to the overhaul area for the duration of the work. In this connection, a major overhaul such as the USS MULLINNIX will undergo can take over six months.

We considered the propriety of Home Port Policy geographical restrictions in our decision in 53 Comp. Gen. 102 (1973). We set out the following Navy statement in support of the Policy:

"The intent of this policy is not to favor the award of overhaul contracts to any particular area but, instead, to minimize disruption to Navy families. While family separation has always been, and will always be, an expected part of Navy life, unnecessary separations must be avoided if the Navy is to retain the trained manpower necessary for the future: \* \* \*

"\* \* \* Family separation is a hardship and is one of the more compelling reasons cited for not adopting a Navy career. With the advent of an all volunteer Navy, and with strenuous competition for manpower from the other Armed Forces and from the civilian sector, it is imperative that the quality of Navy life be maintained at an acceptable level. One important way we can improve the average Navy man's life is to allow him time with his family; one way chosen to do this is to accomplish the maximum possible amount of ship maintenance in the home port."

We concluded:

" \* \* \* [W]hile it is clear that this policy may sometimes result in increased costs to the Government and may prevent some bidders who are otherwise qualified from competing for an award, we cannot agree that the Home Port Policy is unduly restrictive of competition so as to contravene the statutory requirement for competitive procurements. We think the record in this case adequately shows that the Navy's restrictive requirement 'serves a useful or necessary purpose' in meeting its needs, \* \* \* since personnel morale and retention will be better served by minimizing the occasions on which its ship crew personnel must be separated from their families. Furthermore, as the Navy points out, home port restrictions are not to be applied if they would 'prevent the obtaining of adequate competition' or would result in unreasonably high costs. \* \* \* Accordingly, we do not believe that application of Home Port Policy to Federal procurements is illegal."

#### Instant RFP and Protest

Because the Navy did not anticipate adequate competition for the contract to overhaul the USS MULLINNIX within the Sixth ND, it broadened the area of competition pursuant to section 7-3.4 of the Repair Manual, ultimately including all East and Gulf Coast Districts except the Fifth. The Navy reports that as a matter of Naval Sea Systems Command unwritten policy it generally will not solicit firms in the Fifth ND to work on ships home-ported elsewhere. The Navy's rationale is that it is necessary that the Fifth ND not be "saturated" with work on ships from other Districts in order to insure that there will be contractors available in the District to overhaul any of the great number of ships home-ported there consistent with the Home Port Policy, should any such overhauls be needed. In this respect, as stated above the Fifth ND is the home port of 55 percent of the Navy vessels home-ported on the East and Gulf Coasts; the Navy states that the percentage includes 36,000 people on 39 percent of all combatant ships, 67 percent of all auxiliary ships, and all amphibious ships.

NORSHIPCO's position essentially is that while it supports the Home Port Policy as described in our 1973 decision, the "Fifth ND exclusionary rule" simply is not consistent with the Policy. NORSHIPCO points out that the exclusion of Fifth ND firms from competing for contracts to overhaul vessels home-ported elsewhere may well result in more of a disruption of the crews and their families than if the firms were allowed to compete. For example, the USS MULLINNIX may end up being overhauled in New York (Third Naval District) or Boston (First Naval District) instead of in Norfolk, which is much closer to the vessel's home port.

Further, NORSHIPCO asserts that there simply is no possibility that the Fifth ND will be "saturated" in 1981 with work on ships home-ported there so that the overhaul of the USS MULLINNIX in Norfolk would necessitate the overhaul of a Fifth ND vessel in another location.

#### Decision

The Policy that we considered in our 1973 decision did not include the Fifth ND "exclusionary rule"; the rule was not instituted until approximately three years ago. In condoning the Home Port Policy we stated:

"The basic principle underlying Federal procurement is that full and free competition is to be maximized to the fullest extent possible, thereby providing qualified sources an equal opportunity to compete for Government contracts. See 10 U.S. Code 2305; Armed Services Procurement Regulation (ASPR) [now Defense Acquisition Regulation] 1-300.1. However, it is well established that legitimate restrictions on competition may be imposed when the needs of procuring agencies so require. 42 Comp. Gen. 102 (1962). Many of these restrictions are specifically provided for in the ASPR (see, for example, ASPR 1-1101, et seq., regarding qualified products lists). Others, which are not specifically mentioned in ASPR are imposed in accordance with the particular need of the Government, and may involve such things as product experience, 48 Comp. Gen. 291 (1968); ability to demonstrate a complex system having specified performance features, 49 Comp. Gen. 857 (1970); and geographic requirements, B-157053, August 2, 1965, and B-157219, August 30, 1965.

Our Office has taken the position that these various solicitation provisions, while obviously restrictive of competition in the broadest sense, need not be regarded as unduly restrictive when they represent the actual needs of the procuring agency. 52 Comp. Gen. 640 (1973); B-157053, supra. Further the fact that one or more bidders or potential bidders cannot comply with the requirements of particular solicitation provisions does not automatically make those provisions unduly restrictive. 52 Comp. Gen. 640, supra." (Emphasis in the original.)

That quotation, as well as the others from our 1973 decision set out above, reflects the importance to Government procurement of maximizing competition to the greatest extent practicable; generally, the benefit to both the public and the Government, in terms of price and other factors, is directly proportional to the extent of the competition. It is for that reason that a contracting agency may impose on the competition a geographical or other restriction only if, after careful consideration of all relevant factors, the restriction is deemed necessary to meet the agency's actual minimum needs. Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry, 54 Comp. Gen. 29 (1974), 74-2 CPD 27.

We have no reason to alter our view that the Home Port Policy as originally conceived certainly has applicability whenever a ship is to be overhauled -- with few exceptions (such as the need for special facilities) the concern with the disruption of Navy families is one legitimate enough to warrant the Policy's geographical restriction in almost all situations.

However, we do not view the Fifth ND "exclusionary rule" as similarly for general application. The record shows that it is the Navy's experience that notwithstanding that it affords families of crew members of vessels being overhauled in other than their home ports the opportunity to move to the overhaul location, the families as a general matter in reality simply choose to remain in the home port area during the overhaul. Thus, the Fifth ND "exclusionary rule" as a practical matter must be viewed as causing the crew members of a vessel home-ported in a District often near the Fifth ND to locate a considerable distance away from their families

for the duration of a particular overhaul in the expectation that the crews of Fifth ND vessels that may be overhauled in the future will be able to locate in the home port.

Because of the large number of ships home-ported in the Fifth ND relative to other Districts, this may be appropriate in terms of furthering the Home Port Policy in some circumstances. The reason is that there may be fewer non-Fifth ND crew members that would be relocated than there are Fifth ND crew members that would be able to stay in their home port.

However, in circumstances where overhaul scheduling is such that there may be no real danger that award to a Fifth ND firm for the overhaul of a vessel from another District would result in no Fifth ND contractors to overhaul Fifth ND ships, the Navy's policy to exclude Fifth ND shipyards from these procurements simply would cause a greater disruption of Navy families than would otherwise be the case. This is so because ships home-ported in districts adjacent to the Fifth ND will be overhauled much further from the home port area than would be necessary. As such, it would run directly afoul of the Navy's stated purpose behind the Home Port Policy -- to minimize the disruption of Navy families -- which caused us to condone the Policy in 1973.

Accordingly, and in view of the statutory mandate to maximize competition, we believe that the propriety of the Fifth ND "exclusionary rule's" implementation must, in contrast to the general applicability of the Home Port Policy restrictions per se, depend on the reasonableness in each particular situation of the Navy's actual plans as to future overhauls of Fifth ND vessels that might be adversely affected by including Fifth ND firms in a competition for vessels outside the Fifth ND. Thus, a general application of this restriction may under the circumstances of a particular procurement be viewed as unduly restrictive of competition.

The Navy states that it is the agency's "projected forecast that ships home-ported in the Fifth ND requiring overhauls during fiscal year 1981 will fill the capacity of the Fifth ND."

We first note that the overhaul of the USS MULLINNIX is scheduled to begin on February 20, 1981 and to be completed in September of the same year. The record indicates that there presently is only one Navy ship being overhauled in the

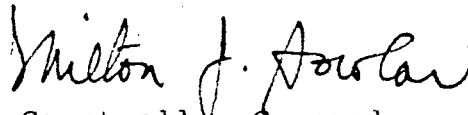
Fifth ND, and that overhaul is to be completed shortly. There apparently are four firms in the Fifth ND, including NORSHIPCO, with major overhaul capability, some with multiple capacity -- the protester asserts that it has facilities to overhaul four ships at a time -- and NORSHIPCO alleges that none of the four firms has a major overhaul scheduled for fiscal year 1981. Accordingly, it would appear that there is considerable capacity in the District for 1981 overhauls of Fifth ND vessels. In this respect, we are concerned only with work that we anticipate would be bid on by the firms with major overhaul capacity, as opposed to "minor" overhauling for which that capacity could not logically be viewed as being adversely affected if the USS MULLINNIX were overhauled in the Fifth ND.

In any case, the record does not clearly support the Navy's "projected forecast" in that there is no indication in the agency's submissions of any specific major overhauls of Fifth ND vessels firmly scheduled. On the other hand, the record does show that because of an increased Navy presence in the Indian Ocean fewer ships will be overhauled (major and minor) in the Fifth ND in 1981 than in other years. In addition, even if a major overhaul were to be scheduled for the Fifth ND immediately, the overhaul of the USS MULLINNIX might be substantially completed by the time an award could be made and work begun. With regard to this last point, we note that the contract to overhaul the USS MULLINNIX was awarded to a non-Fifth ND firm, notwithstanding NORSHIPCO's protest, over three months after the issuance of the solicitation for the work, and that in accordance with Navy policy the overhaul is not to begin for another three months after that date. Using a similar time frame, no work on an as yet unscheduled major overhaul would begin until the second half of 1981.

Nonetheless, the record shows that in addition to filing this bid protest, NORSHIPCO filed suit in the matter in the United States District Court for the Eastern District of Virginia, Norfolk Division (Civil Action No. 80-1083-N), requesting a preliminary injunction against the award of a contract under the RFP. The court denied NORSHIPCO's request, stating that the General Accounting Office was the proper forum to consider the issue. However, the court also ordered NORSHIPCO to submit to the Navy a timely proposal for the work. While the Navy apparently never opened NORSHIPCO's proposal, the firm has informally advised our Office that the offer exceeded the contract price.

Assuming that the Navy confirms that NORSHIPCO's price exceeded the contract price, and since work on the USS MULLINNIX is to begin shortly, we do not believe that termination of the awarded contract would be appropriate even if we were to conclude that the record in support of the Navy's forecast for 1981 was insufficient. However, by separate letter, we are advising the Secretary of the Navy of our views.

The protest is sustained to the extent that it concerns the general application of the Fifth ND "exclusionary rule."

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States